



County of Los Angeles
INTERNAL SERVICES DEPARTMENT

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August 05, 2014

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**AMENDMENT TO THE DETERMINATIONS OF CONTRACTOR
NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT ORDINANCE
(ALL SUPERVISORIAL DISTRICTS)
(3 VOTES)**

SUBJECT

APPROVAL TO AMEND THE DETERMINATIONS OF CONTRACTOR
NON-RESPONSIBILITY AND CONTRACTOR DEBARMENT ORDINANCE

IT IS RECOMMENDED THAT THE BOARD:

Approve, introduce, waive reading, and place on your Board's agenda for adoption an ordinance amending Title 2, Chapter 2.202 of the Los Angeles County Code, Determination of Contractor Non-Responsibility and Contractor Debarment.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On January 11, 2000, your Board adopted an Ordinance for Determinations of Contractor Non-Responsibility and Contractor Debarment (Ordinance), Los Angeles County Code Chapter 2.202. The Ordinance provides procedures for the County to determine that a contractor is (1) non-responsible and shall not be awarded a particular contract, and (2) debarred from contracting with the County for a specific period of time.

On February 10, 2004 and August 9, 2005, your Board approved revisions to the Ordinance, providing clarification and guidance within the non-responsibility and debarment process.

This recommended action expands the definition of a “contractor” to strengthen the County’s ability to take a debarment action against more than just the contracting entity itself, or an individual or entity owning more than ten percent of the contracting entity. The revised Ordinance expands the parties (e.g., shareholders, managers, employees, etc.) that may be included in a debarment action if they participated, knew of, or should reasonably have known of conduct that results in a finding of non-responsibility or debarment.

The recommended amendments will also be included in revisions to the Implementation of Procedures for Determinations of Contractor Non-Responsibility and Contractor Debarment issued by the Internal Services Department (ISD) after your Board’s approval of the attached Ordinance.

Implementation of Strategic Plan Goals

The recommended action supports County Strategic Plan Goal Number 1 (Operational Effectiveness/Fiscal Sustainability) by maximizing the effectiveness of the County’s Process.

FISCAL IMPACT/FINANCING

There is no fiscal impact from this action.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

On January 2000, your Board adopted the Determinations of Contractor Non-Responsibility and Contractor Debarment Ordinance to promote integrity in the County’s contracting process and to protect the public’s interest. This Ordinance sets forth the requirements and process for finding a contractor non-responsible or debarring a contractor.

The recommended action includes making the following revisions: (1) transferring the responsibility for issuing the Implementation of Procedures for Determinations of Contractor Non-Responsibility and Contractor Debarment from the Auditor-Controller to ISD; and (2) defining the term “contractor”.

CONTRACTING PROCESS

The Determinations of Contractor Non-Responsibility and Contractor Debarment Ordinance will continue to be applicable in the County’s contract process.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The Ordinance amendment will enhance existing non-responsibility and debarment policies and procedures while providing departments with the appropriate guidance and direction necessary to make determinations consistent with your Board's direction.

Respectfully submitted,

A handwritten signature in cursive script that reads "J.E. Jones".

JIM JONES

Director

JJ:JS:YY:LG

Enclosures

c: Chief Executive Officer
County Counsel
Auditor-Controller


ANALYSIS

This ordinance amends Title 2 - Administration of the Los Angeles County Code relating to Determinations of Contractor Non-Responsibility and Contractor Debarment by:

- Revising language to reflect the Internal Services Department ("ISD") as the responsible department for issuing implementation instructions;
- Adding language to Section 2.202.020, paragraph A, to expand the definition of "contractor" to include "officers, directors, shareholders, partners, managers, employees, or other individuals associated with the contractor, subcontractor, vendor who participated in, knew of, or had reason to know of conduct that results in a finding of non-responsibility or debarment"; and
- Revising language to Section 2.202.040, paragraph E, subparagraph (12) by replacing the word "contractor's principals" with "contractor."

JOHN F. KRATTLI
County Counsel

By


EDWARD YEN
Deputy County Counsel
Contracts Division

EY:pt

Requested: 03-21-14
Revised: 06-19-14

ORDINANCE NO. _____

An ordinance amending Title 2 - Administration of the Los Angeles County Code, relating to Determinations of Contractor Non-Responsibility and Contractor Debarment.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Section 2.202.010 is hereby amended to read as follows:

2.202.010 Findings and declarations.

A. The board of supervisors finds that, in order to promote integrity in the county's contracting processes and to protect the public interest, the county's policy shall be to conduct business only with responsible contractors. The board of supervisors further finds that debarment is to be imposed only in the public interest for the county's protection and not for the purpose of punishment.

B. Determinations of contractor non-responsibility and contractor debarment shall be made in accordance with the procedures set forth in the ordinance codified in this chapter and implementation instructions issued by the ~~auditor-controller~~Internal Services Department.

SECTION 2. Section 2.202.020 is hereby amended to read as follows:

2.202.020 Definitions.

For purposes of this chapter, the following definitions apply:

A. "Contractor" means a person, partnership, corporation, or other entity who has contracted with, or is seeking to contract with, the county or a nonprofit corporation created by the county to provide goods to, or perform services for or on behalf of, the county or a nonprofit corporation created by the county. A contractor includes a

contractor, subcontractor, vendor, or any person or entity who or which owns an interest of 10 percent or more in a contractor, subcontractor, or vendor of their respective officers, directors, owners, co-owners, shareholders, partners, managers, employees, or other individuals associated with the contractor, subcontractor, or vendor who participated in, knew of, or should reasonably have known of conduct that results in a finding of non-responsibility or debarment.

B. "Contract" means any agreement to provide goods to, or perform services for or on behalf of, the county or a nonprofit corporation created by the county.

C. "Debarment" means an action taken by the county which results in a contractor being prohibited from bidding or proposing on, being awarded and/or performing work on a contract with the county. A contractor who has been determined by the county to be subject to such a prohibition is "debarred."

D. "Department head" means either the head of a department responsible for administering a particular contract for the county or the designee of same.

E. "County" means the county of Los Angeles, any public entities for which the board of supervisors is the governing body, and any joint powers authorities of which the county is a member that have adopted county contracting procedures.

F. "Contractor hearing board" means the persons designated to preside over contractor debarment hearings and make recommendations on debarment to the board of supervisors.

G. Determination of "non-responsibility" means an action taken by the county which results in a contractor who submitted a bid or proposal on a particular contract

being prohibited from being awarded and/or performing work on that contract. A contractor who has been determined by the county to be subject to such a prohibition is "non-responsible" for purposes of that particular contract.

H. "Bid or proposal" means a bid, proposal, or any other response to a solicitation submitted by or on behalf of a contractor seeking an award of a contract.

SECTION 4. Section 2.202.040 is hereby amended to read as follows:

2.202.040 Debarment of contractors.

A. The county may debar a contractor who has had a contract with the county in the preceding three years and/or a contractor who has submitted a bid or proposal for a new contract with the county.

B. The county may debar a contractor if the county finds, in its discretion, that the contractor has done any of the following: (1) violated a term of a contract with the county or a nonprofit corporation created by the county; (2) committed an act or omission which negatively reflects on the contractor's quality, fitness, or capacity to perform a contract with the county, any other public entity, or a nonprofit corporation created by the county, or engaged in a pattern or practice which negatively reflects on same; (3) committed an act or omission which indicates a lack of business integrity or business honesty; or (4) made or submitted a false claim against the county or any other public entity.

C. The decision by the county to debar a contractor is within the discretion of the county. The seriousness and extent of the contractor's acts, omissions, patterns, or practices as well as any relevant mitigating or aggravating factors, including those

described in Subsection (E) below, may be considered by the county in determining whether to debar a contractor and the period of debarment. Generally, the period of debarment should not exceed five years. However, if circumstances warrant, the county may impose a longer period of debarment up to and including permanent debarment.

D. To impose a debarment period of longer than five years, and up to and including permanent debarment, in addition to the grounds described in Subsection (B) above, the county shall further find that the contractor's acts or omissions are of such an extremely serious nature that removal of the contractor from future county contracting opportunities for the specified period is necessary to protect the county's interests.

E. Mitigating and aggravating factors that the county may consider in determining whether to debar a contractor and the period of debarment include but are not limited to:

- (1) The actual or potential harm or impact that results or may result from the wrongdoing.
- (2) The frequency and/or number of incidents and/or duration of the wrongdoing.
- (3) Whether there is a pattern or prior history of wrongdoing.
- (4) A contractor's overall performance record. For example, the county may evaluate the contractor's activity cited as the basis for the debarment in the broader context of the contractor's overall performance history.

(5) Whether a contractor is or has been debarred, found non-responsible, or disqualified by another public entity on a basis of conduct similar to one or more of the grounds for debarment specified in this Section.

(6) Whether a contractor's wrongdoing was intentional or inadvertent. For example, the county may consider whether and to what extent a contractor planned, initiated, or carried out the wrongdoing.

(7) Whether a contractor has accepted responsibility for the wrongdoing and recognizes the seriousness of the misconduct that led to the grounds for debarment and/or has taken corrective action to cure the wrongdoing, such as establishing ethics training and implementing programs to prevent recurrence.

(8) Whether and to what extent a contractor has paid or agreed to pay criminal, civil, and administrative liabilities for the improper activity, and to what extent, if any, has the contractor made or agreed to make restitution.

(9) Whether a contractor has cooperated fully with the county during the investigation, and any court or administrative action. In determining the extent of cooperation, the county may consider when the cooperation began and whether the contractor disclosed all pertinent information known to the contractor.

(10) Whether the wrongdoing was pervasive within a contractor's organization.

(11) The positions held by the individuals involved in the wrongdoing.

(12) Whether a contractor's principals participated in, knew of, or tolerated the offense.

(13) Whether a contractor brought the activity cited as a basis for the debarment to the attention of the county in a timely manner.

(14) Whether a contractor has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the county.

(15) Whether a contractor had effective standards of conduct and internal control systems in place at the time the questioned conduct occurred.

(16) Whether a contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes the cause for debarment.

(17) Other factors that are appropriate to the circumstances of a particular case.

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